

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICK CALLIARI, individually and
as Representative of the Former
Shareholders of GCI Investments Inc., a
Washington corporation,

Plaintiff,

v.

SARGENTO FOODS, INC.,

Defendant/
Counterclaim
Plaintiff,

v.

PATRICK C. CALLIARI, FLORA
DAMASIO, ANTOINNE IOANNIDES,
ANDREAS IOANNIDES, GAYLE K.
GOODRICH, GILLIAN OLSON,
RICHARD J. OLSON, and BETTY
CROUSE,

Counterclaim
Defendants.

No. 2:08-CV-1111-MJP
(Consolidated with 2:08-CV-1112MJP)

DEFENDANT SARGENTO FOODS,
INC.'S COUNTERCLAIM

JURY DEMAND

Defendant/Counterclaim Defendant Sargento Foods Inc., by and through its
attorneys, McNaul Ebel Nawrot & Helgren PLLC, alleges as follows:

I. PARTIES

1. Sargento Foods, Inc. ("Sargento") is a Wisconsin corporation with its
headquarters and principal place of business in Plymouth, Wisconsin. Sargento is a

1 national packager and marketer of cheese products, non-cheese snack food items, and
2 ethnic sauces.

3 2. Upon information and belief, Plaintiff and Counterclaim Defendant
4 Patrick C. Calliari ("Calliari") is an adult resident of Kirkland, Washington.

5 3. Upon information and belief, Counterclaim Defendant Flora Damasio is an
6 adult resident of Kirkland, Washington.

7 4. Upon information and belief, Counterclaim Defendant Antionne Ioannides
8 is an adult resident of Verrieres le Buisson, France.

9 5. Upon information and belief, Counterclaim Defendant Andreas Ioannides
10 is an adult resident of Athens, Greece.

11 6. Upon information and belief, Counterclaim Defendant Gayle K. Goodrich
12 is an adult resident of North Vancouver, B.C., Canada.

13 7. Upon information and belief, Counterclaim Defendant Gillian Olson is an
14 adult resident of Vancouver, B.C., Canada.

15 8. Upon information and belief, Counterclaim Defendant Richard J. Olson is
16 an adult resident of Vancouver, B.C., Canada.

17 9. Upon information and belief, Counterclaim Defendant Betty Crouse is an
18 adult resident of Vancouver, Washington.

19 **II. JURISDICTION AND VENUE**

20 10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in
21 that the parties are citizens of different states or citizens of foreign states and the amount
22 in controversy exceeds \$75,000, exclusive of interest or costs.

23 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) or (a)(3)
24 and (d) because all of the Counterclaim Defendants that reside in the United States are
25 residents of this District, and thus subject to personal jurisdiction, and the remaining
26 Counterclaim Defendants are citizens of foreign states.

III. FACTS

12. On April 30, 2007, Sargento purchased all of the stock of GCI Investments, Inc. (“GCI”), the parent company of Portionables, Inc. (“Portionables”). Portionables manufactures frozen sauce pellets.

13. Calliari, Flora Damasio, Antionne Ioannides, Andreas Ioannides, Gayle K. Goodrich, Gillian Olson, Richard J. Olson, and Betty Crouse (collectively, “the Shareholders”), were the shareholders of GCI. Calliari agreed to serve as the Shareholders’ Representative for Sargento’s purchase of GCI.

14. Sargento, GCI, and the Shareholders entered into a Stock Purchase Agreement on April 30, 2007, in order to effect Sargento’s purchase of GCI.

15. In Articles II and III of the Stock Purchase Agreement, GCI made a number representations and warranties.

16. The Shareholders agreed, in Section 7.2 of the Stock Purchase Agreement, to indemnify Sargento for any breaches of the representations and warranties GCI and they made in the Stock Purchase Agreement.

17. Certain of the representations and warranties that the Shareholders and/or GCI made in the Stock Purchase Agreement were false. For example, it was represented and warranted that GCI and Portionables were in compliance with applicable laws and that the equipment used by Portionables at its manufacturing facilities was adequate for the purposes to which it was being put. However, Portionables was manufacturing products at one of its facilities that, under applicable law, required a license that the facility did not have and had never attempted to obtain.

18. Additionally, Calliari made false statements concerning the capacity of a Portionables facility to produce product and the Shareholders are liable for the resulting breach of applicable representations and warranties.

1 19. Sargento will be required to expend substantial time and resources to
2 retrofit Portionables' South Dakota facility in order to bring it into compliance with
3 applicable laws and permit it to manufacture its product lines, and to produce product at
4 the volumes represented.

5 20. GCI and/or the Shareholders also failed to disclose, again in violation of
6 the representations and warranties, that Portionables had liability for products containing
7 ingredients supplied by Portionables that were subsequently recalled. These recalls have
8 resulted in claims against Portionables, including claims that are the subject of litigation
9 that is currently pending against Portionables in New Jersey.

10 21. Although Sargento has provided appropriate notice to the Shareholders of
11 the relevant breaches of the representations and warranties, the Shareholders have refused
12 to indemnify Sargento as required by the Stock Purchase Agreement.

13 22. In connection with Sargento's purchase of GCI, Sargento and Calliari
14 entered into an Employment Agreement.

15 23. That agreement required Calliari to work for Sargento from April 30, 2007,
16 until December 31, 2012, unless his employment was extended or terminated under the
17 terms of the Agreement.

18 24. Sargento provided Calliari with a signing and retention bonus in
19 connection with this Agreement and paid him a salary.

20 25. The Agreement permits Calliari to terminate his employment for good
21 reason. Calliari terminated his employment, claiming it was for good reason, but in fact,
22 Calliari did not have good reason to terminate his employment.

23 26. By terminating his employment before December 31, 2012, without good
24 reason, Calliari breached the Employment Agreement.

1 27. During the course of his employment with Sargento, Calliari used company
2 funds to pay for extravagant personal expenses, including entertainment, travel,
3 electronics, and other items.

4 28. Calliari likewise took company property with him when he terminated his
5 employment with Sargento and has refused to return it.

6 **IV. FIRST CAUSE OF ACTION:**
7 **BREACH OF CONTRACT**

8 29. Sargento realleges and incorporates by reference its allegations in
9 Paragraphs 1 through 28 above.

10 30. Contrary to the representations and warranties for which the Shareholders
11 were responsible, one of the Portionables facilities was in violation of applicable law by
12 producing products without a required license. As a result, the plant equipment was not
13 adequate for the uses to which it was put and Sargento will be required to expend
14 substantial time and resources to retrofit the facility and bring it into compliance with
15 applicable laws and regulations.

16 31. Contrary to the representations and warranties for which the Shareholders
17 were responsible, it was not disclosed that Portionables did not have the capacity
18 necessary to meet projected sales to its customers, and as a result, Sargento will be
19 required to expend substantial time and resources to retrofit Portionables facilities to allow
20 it to produce the volume of product represented.

21 32. Contrary to the representations and warranties for which the Shareholders
22 were responsible, the Shareholders failed to disclose a material liability, obligation, or
23 claim relating to defective products claims and resultant litigation described above.
24 Sargento has been and will continue to be required to expend its time and resources to
25 defend these claims, and may be required to pay a judgment entered against it.

26 33. Sargento notified the Shareholders of these claims, but they have refused to
indemnify Sargento.

**V. SECOND CAUSE OF ACTION:
PROMISSORY ESTOPPEL**

34. Sargento realleges and incorporates by reference its allegations in Paragraphs 1 through 33 above.

35. The Shareholders made or indemnified Sargento for a number of promises to Sargento regarding GCI and Portionables as described in Paragraphs 15–20 above.

36. The Shareholders knew or reasonably should have known that Sargento would rely on these promises.

37. In reasonable reliance on these promises, Sargento entered into the Stock Purchase Agreement with the Shareholders and suffered damages.

38. It would be unjust to permit the Shareholders to avoid their obligations related to the breach of these promises to Sargento.

**VI. THIRD CAUSE OF ACTION:
MISREPRESENTATION**

39. Sargento realleges and incorporates by reference its allegations in Paragraphs 1 through 38 above.

40. The Shareholders made or indemnified Sargento for various representations about GCI and Portionables as described in Paragraphs 15–20 above.

41. These representations were material to Sargento's decision to enter the Stock Purchase Agreement.

42. The Shareholders knew or reasonably should have known that the representations were false.

43. The Shareholders intended Sargento to act on the representations in proceeding with the Stock Purchase Agreement.

44. Sargento was unaware of the falsity of the representations, and, in reasonable reliance on those representations, Sargento entered into the Stock Purchase Agreement.

1 45. As a result, Sargento has suffered damages including the time and
2 resources to retrofit the Portionables facilities in order to bring them into compliance with
3 applicable laws and permit it to manufacture its product lines, and to produce product at
4 the volumes represented, the time and resources required to defend the product claims,
5 and any sums that Sargento may be required to pay if a judgment is entered against it.

6 **VII. FOURTH CAUSE OF ACTION:**
7 **DECLARATORY JUDGMENT**

8 46. Sargento realleges and incorporates by reference its allegations in
9 Paragraphs 1 through 45 above.

10 47. Calliari did not have good reason to terminate his employment under the
11 Employment Agreement between Calliari and Sargento.

12 48. A justiciable controversy exists between Sargento and Calliari as to
13 whether Calliari properly terminated his employment for good reason under the
14 Employment Agreement.

15 49. This controversy is ripe for determination and Sargento seeks a declaration
16 that Calliari did not have good reason to terminate his employment under the Employment
17 Agreement.

18 **VIII. FIFTH CAUSE OF ACTION:**
19 **BREACH OF EMPLOYMENT AGREEMENT BY CALLIARI**

20 50. Sargento realleges and incorporates by reference its allegations in
21 Paragraphs 1 through 49 above.

22 51. Calliari was obligated under the Employment Agreement to work for
23 Sargento until December 31, 2012, unless the parties extended or terminated his
24 employment under the terms of the Agreement.

25 52. Among other things, Sargento paid Calliari a signing and retention bonus
26 as consideration for the Employment Agreement. Sargento also paid Calliari a salary.

1 53. Calliari terminated his employment before December 31, 2012, without
2 good cause under the Employment Agreement, and thereby breached his obligations under
3 that Agreement.

4 54. Additionally, Calliari failed to provide services he promised to provide to
5 Sargento.

6 55. As a result, Sargento has suffered damages, including the signing and
7 retention bonus paid to Calliari and unearned salary paid to Calliari.

8 **IX. SIXTH CAUSE OF ACTION:**
9 **CONVERSION BY CALLIARI**

10 56. Sargento realleges and incorporates by reference its allegations in
11 Paragraphs 1 through 55 above.

12 57. Sargento had a property interest in the property Calliari retained when he
13 terminated his employment.

14 58. Calliari wrongfully received company funds that he used to pay for
15 personal expenses during the course of his employment.

16 59. By taking company property and using company funds for personal
17 expenses, Calliari has willfully interfered with Sargento's right to the use and enjoyment
18 of its property.

19 60. As a result, Sargento has suffered damages, including the costs of Calliari's
20 personal expenses incurred by Sargento and the value of the property Calliari has taken
21 from Sargento.

22 **X. PRAYER FOR RELIEF**

23 WHEREFORE, defendant Sargento seeks the following relief against the
24 Counterclaim Defendants:

25 A. For a judgment in favor of Sargento and against the Shareholders for
26 damages in an amount to be determined at trial for the Shareholders' breach of the Stock
Purchase Agreement, including all costs, attorneys fees, and disbursements in this action;

1 B. For a judgment in favor of Sargento and against the Shareholders for
2 damages in an amount to be determined at trial for Sargento's promissory estoppel claim,
3 including all costs, attorneys fees, and disbursements in this action;

4 C. For a judgment in favor of Sargento and against the Shareholders for
5 damages in an amount to be determined at trial for Sargento's misrepresentation claim,
6 including all costs, attorneys fees, and disbursements in this action;

7 D. For a declaration that Calliari did not have good reason to terminate his
8 employment under the Employment Agreement;

9 E. For a judgment in favor of Sargento and against Calliari for damages in an
10 amount to be determined at trial for Calliari's breach of the Employment Agreement,
11 including all costs, attorneys fees, and disbursements in this action;

12 F. For a judgment in favor of Sargento and Against Calliari for damages in an
13 amount to be determined at trial for Calliari's conversion of company property and funds,
14 including all costs, attorneys fees, and disbursements in this action; and,

15 G. For such other and further relief as the Court deems just and equitable.

16 DATED this 30th day of January, 2009.

17 McNAUL EBEL NAWROT & HELGREN PLLC

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26

CERTIFICATE OF SERVICE

I certify that on January 30, 2009, I electronically filed the foregoing Defendant's Counterclaims with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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Defendant Patrick Calliari

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DATED this 30th day of January, 2009.

By: /s/ Robert M. Sulkin
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